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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
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PLR-108248-13

Date:
August 13, 2013

Legend

Distributing =

Controlled =

Sub 1 =

Exchange =

Date 1 =

Date 2 =

Date 3 =

Business A =

Business B =

Business C =

Business D =

State A =

a =

b =

c =

d =

e =

f =

Dear :

This letter is in response to your February 19, 2013 request for rulings on certain federal income tax consequences of a Proposed Transaction (defined below). The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon the facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, this office has not verified any information pertaining to, and has made no determination regarding whether the Proposed Transaction: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Federal Income Tax Regulations; (ii) is used principally as a device for the distribution of earnings and profits of the distributing corporation, the controlled corporation, or both (see § 355(a)(1)(B) and § 1.355-2(d)); and (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50% or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

Facts

Distributing, a publicly-traded State A corporation, is the common parent of a consolidated group of corporations (the “Group”) that has numerous corporate and non-corporate, direct and indirect subsidiaries. The authorized capital stock of Distributing consists of a shares of voting common stock, b par value, and c shares of preferred stock, b par value. As of Date 1, d shares of the common stock and no shares of the preferred stock were outstanding. Some of the Distributing common stock is held by foreign shareholders, none of which holds five percent or more of such stock. Distributing's common stock is listed on the Exchange. Distributing, through its direct and indirect subsidiaries, engages in Business A, Business B, and Business C.

Distributing wholly owns Controlled, a State A corporation which is a member of the Group. Controlled owns numerous corporate and non-corporate, direct and indirect subsidiaries. Controlled, through its direct and indirect subsidiaries, engages in Business D. On Date 2, Controlled acquired all of the stock of Sub 1, a State A corporation that has historically conducted Business D. Sub 1 is a member of the Group.

Distributing wishes to completely separate Business D from Business A, Business B, and Business C in order to: (i) allow each of Distributing and Controlled to prioritize independently their various investment opportunities going forward and to better position the management teams of Distributing and Controlled to pursue organic growth and/or acquisitions and fund those growth investments via direct access to the debt or equity markets, as appropriate, taking into account only those considerations relating to each company's business strategies and business models, (ii) enhance Controlled's ability to use its equity as an attractive acquisition currency, (iii) allow Distributing and Controlled to focus on their respective strategic priorities, the different challenges and opportunities in their businesses, and their different financial profiles and capital needs, and (iv) provide Distributing and Controlled with the ability to issue equity-based incentive awards that more directly link and closely align the interests of each of their companies and their employees, making equity-based incentive awards a more effective management tool to attract, motivate and retain key employees.

Proposed Transaction

To achieve the separation, management has proposed the following transactions (the “Proposed Transaction”):

(1) Distributing anticipates undertaking a reverse stock split immediately prior to the Distribution (defined below), subject to receipt of stockholder approval. If approved by Distributing's stockholders, the Board of Directors of Distributing will be authorized to effect the reverse stock split with a ratio of e. Distributing will distribute cash to its stockholders in lieu of fractional shares.

(2) Distributing will distribute its Controlled stock, *pro rata*, to its shareholders (the “Distribution”).

Distributing and Controlled will enter into one or more agreements (the “Post-Separation Agreements”) to effect the transaction steps and to provide for mutual indemnification obligations that generally (A) hold Controlled responsible for liabilities arising out of the businesses of Controlled and its subsidiaries as well as for breaches by Controlled of the Post-Separation Agreements, the Tax Sharing Agreement, or the Transitional Services Agreements (each defined below), and (B) hold Distributing responsible for liabilities arising out of the businesses that will not be owned by Controlled and its subsidiaries at the time of the Distribution as well as for breaches by Distributing of the Post-Separation Agreements, the Tax Sharing Agreement, or the Transitional Services Agreements. In addition, Distributing and Controlled will enter into a tax sharing agreement (the “Tax Sharing Agreement”) that will provide for the allocation of and indemnification of tax liabilities and other agreements related to tax matters.

Certain members of the Distributing SAG and the Controlled SAG (each defined below) will also enter into one or more services agreements for the provision of certain transitional services, which may include information technology, payroll, legal, human resources, and other services (the “Transitional Services Agreements”). The Transitional Services Agreements will be effective for a period of up to f months after the Distribution (subject to an option, at Controlled’s election, to extend certain services for up to an additional f months).

Representations

The following representations have been made regarding the Proposed Transaction:

(a) Any indebtedness owed by Controlled to Distributing after the Distribution will not constitute stock or securities.

(b) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(c) The Distribution will occur no sooner than Date 3.

(d) The five years of financial information submitted on behalf of Business A is representative of the present operations of Business A, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(e) The five years of financial information submitted on behalf of Business D is representative of the present operations of Business D, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(f) Distributing and Controlled will treat all members of their respective separate affiliated groups as defined in § 355(b)(3)(B) (the “Distributing SAG” and the “Controlled SAG”, respectively) as one corporation in determining whether the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.

(g) The Distributing SAG neither acquired Business A nor acquired control of an entity conducting Business A during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Distribution, the Distributing SAG has been the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner following the Distribution.

(h) The Distributing SAG neither acquired Business D nor acquired control of an entity conducting Business D during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Distribution, the Distributing SAG has been the principal owner of the goodwill and significant assets of Business D and the Controlled SAG will continue to be the principal owner following the Distribution.

(i) Following the Proposed Transaction, Distributing and Controlled will each continue the active conduct of its respective business, independently and with its separate employees, except that certain members of the Distributing SAG may provide certain transitional services for a period of up to months (subject to an option, at Controlled’s election, to extend certain services for up to an additional months) after the Distribution under the Transitional Services Agreements.

(j) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution, other than: (i) payables and receivables arising from products purchased or services provided under the Post-Separation Agreements or the Transitional Services Agreements or taxes, the allocation of which shall be governed by the Tax Sharing Agreement, (ii) trade payables and receivables incurred in the ordinary course of business, and (iii) short-term balances related to the shared costs incurred in carrying out the Proposed Transaction, if any, which will be settled as soon as practical following the Distribution. Any indebtedness owed by Controlled to Distributing after the Distribution will not constitute stock or securities.

(k) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Any excess loss account Distributing may have in the Controlled Stock (or a member may have in the stock of another member that is required to be taken into account by § 1.1502-19) will be included in income immediately before the Distribution to the extent required by regulations (see § 1.1502-19).

(l) Except as set forth in the Transitional Services Agreements, payments made in connection with all continuing transactions, if any, between Distributing or its subsidiaries and Controlled or its subsidiaries will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(m) No two parties to the Distribution are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(n) The Distribution is being undertaken for the following corporate business purposes: (i) to allow each of Distributing and Controlled to prioritize independently their various investment opportunities going forward and to better position the management teams of Distributing and Controlled to pursue organic growth and/or acquisitions and fund those growth investments via direct access to the debt or equity markets, as appropriate, taking into account only those considerations relating to each company's business strategies and business models, (ii) to enhance Controlled's ability to use its equity as an attractive acquisition currency, (iii) to allow Distributing and Controlled to focus on their respective strategic priorities, the different challenges and opportunities in their businesses, and their different financial profiles and capital needs, and (iv) to provide Distributing and Controlled with the ability to issue equity-based incentive awards that more directly link and closely align the interests of each of their companies and their employees, making equity-based incentive awards a more effective management tool to attract, motivate and retain key employees. The Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(o) The Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(p) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50% or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

(q) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(r) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled Stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled Stock, that was either (1) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (2) attributable to distributions on Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(s) Immediately after the Distribution, either (i) no person will hold a 50% or greater interest (within the meaning of § 355(g)(3)) in the stock of Distributing or Controlled who did not hold such an interest before the transaction, or (ii) neither Distributing nor Controlled is or will be a disqualified investment corporation for purposes of § 355(g).

(t) Distributing, Controlled, and the shareholders of Distributing will pay their respective expenses, if any, incurred in connection with the Distribution.

(u) Distributing was not a United States real property holding corporation as defined in § 897(c)(2) (a “USRPHC”) during the five-year period ending on the date of the Distribution, and Distributing will not be a USRPHC immediately after the Distribution.

(v) Controlled was not (and will not be) a USRPHC during the five-year period ending on the date of the Distribution, and Controlled will not be a USRPHC immediately after the Distribution.

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Proposed Transaction:

(1) No gain or loss will be recognized by Distributing in the Distribution (§ 355(c)).

(2) No gain or loss will be recognized by (and no amount will be includible in the income of) Distributing shareholders upon their receipt of the stock of Controlled in the Distribution (§ 355(a)).

(3) The basis of the Controlled stock and the Distributing common stock in the hands of a shareholder of Distributing immediately after the Distribution will equal the basis of the Distributing common stock held by such shareholder immediately prior to the Distribution, allocated between the Controlled stock and the Distributing common stock in proportion to their relative fair market values immediately following the Distribution in accordance with § 1.358-2(a)(2) (§ 358(b)(2)).

(4) The holding period of the Controlled stock received by each shareholder of Distributing will include the holding period of the respective Distributing common stock with respect to which the Distribution is made, provided that the Distributing stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

(5) Earnings and profits will be allocated between Distributing and Controlled following the Distribution under § 312(h) and §§ 1.312-10(b) and 1.1502-33(e)(3).

Caveats

Except as expressly provided herein, no opinion is expressed about the federal income tax consequences of the Proposed Transaction under other provisions of the Code or the regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

(i) whether the Distribution satisfies the business purpose requirement of § 1.355-2(b);

(ii) whether the Distribution is being used principally as a device for the distribution of earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d));

(iii) whether the Distribution and any acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii) and § 1.355-7;

(iv) the federal income tax consequences of the reverse stock split, as described in step (1) above; and

(v) any below fair market value transactions between Distributing and Controlled.

Procedural Statements

This ruling letter is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this ruling letter.

In accordance with the power of attorney on file in this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely,

Richard K. Passales

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel (Corporate)

cc: